

JURY TRIAL, REQUIREMENTS FOR — Waiver of right to jury trial.....

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Rule 18.1(b), Ariz. R. Crim. P., provides the procedure for a defendant to waive the right to a jury trial. "[B]efore the judge may accept a waiver of a jury trial he must address the defendant personally and advise him of his rights. Moreover, a waiver may be made only in writing or in open court." *State v. LaGrand*, 152 Ariz. 483, 487, 733 P.2d 1066, 1070 (1987), *citing* Rule 18.1(b)(2).

Because the court must address the defendant personally before accepting a waiver of the right to jury trial, defense counsel may not waive the right to a jury trial on the defendant's behalf if the defendant is not present. *State v. Cochran*, 109 Ariz. 327, 328, 509 P.2d 220, 221 (1973); *State v. Wren*, 115 Ariz. 257, 258, 564 P.2d 946, 947 (App. 1977). However, a "knowing and intelligent waiver of a jury trial can be exercised through counsel, and need not be made and announced by defendant personally." *State v. Jelks*, 105 Ariz. 175, 177, 461 P.2d 473, 475 (1969). If the defendant is present in court and does not object to counsel's statement that defendant will waive his right to trial by jury, the trial court may rely on counsel's statement. *Id.*; *State v. Masengill*, 110 Ariz. 310, 312, 518 P.2d 560, 562 (1974).

"The right to a twelve-member jury may be knowingly, intelligently and voluntarily waived under the same procedure required under Ariz. R. Crim. P. 18.1(b) for waiver of a jury trial." *State v. Prince*, 142 Ariz. 256, 258, 689 P.2d 515, 517 (1984). A "waiver of a twelve-person jury for an eight-person jury must be made in the same manner as the waiver of a jury itself." *State v. Reid*, 155 Ariz. 399, 402, 747 P.2d 560, 563 (1987), *citing Prince*, 142 Ariz. at 258, 689 P.2d at 517.